

UTAH CAPITAL INVESTMENT BOARD MEETING
Friday, February 20, 2004
Minutes

Members Present:	David Harmer, Sterling Jenson, Robert Majka , David Hemingway
Members Absent:	Ed Alter
Visitors:	Commissioner Bruce Johnson, Devin Thorpe, Dan Harrison
Staff:	Jeff Gochmour, Rod Linton, Mark Renda, Jeremy Neilson, Tamee Roberts Jerry Jensen

I. WELCOME

The meeting was called to order at 3:05 pm on Friday, February 20, 2004. Board Chair, David Harmer, welcomed everyone. The minutes from the January meeting were reviewed and a motion was called for.

MOTION: Sterling Jenson moved and Robert Majka seconded the motion to approve the January minutes as amended. The motion carried.

II. DISCUSSION ITEMS

A. WORK WITH TAX COMMISSION ON TAX CREDITS UPDATE

Commissioner Bruce Johnson joined the board meeting via conference call. Mr. David Harmer explained the issue of monetizing the credits. Mr. Harmer asked Commissioner Johnson if a buying entity would still be able to claim their full state tax deductions on federal tax claims if they used the UCIB tax certificate issued by the DCED. Commissioner Johnson explained that the certificate would be invisible for Federal Tax purposes. The payment to UCIC would be equivalent to a payment directly to the state. If the buyers were able to obtain the tax certificates at a discount that would have some ramifications and their federal tax deductions would be smaller. Mr. Harmer explained that UCIC would try to structure the process in a way that would not harm the buyer in any way and try to keep any fees that UCIB would need to pay the designated purchasers to cover inconvenience costs to a minimum. In a conversation with a potential designated purchaser prior to this board meeting, Mr. Harmer learned that the term of the commitment or life of the certificate would be important for them to be interested in the tax credits. Commissioner Johnson reaffirmed that it would be akin to buying a security, they would have an investment. When they cashed in the investment they would be on a breakeven point on the investment. They would also have satisfied a state income tax obligation of the same amount and would still get the deduction. Mark Renda asked if there was some nomenclature related to that certificate such as a "payment in lieu of taxes" something beneficial that the document could be labeled. Commissioner Johnson suggested that looking at the Oklahoma patterns and nomenclature but that the IRS will look past the name and the substance of the transaction, and the substance of the transaction is that the buyer is paying an amount of money in satisfaction of its state tax liability. Mr. Harmer asked how to move forward as quickly as possible with the tax commission on the process, development of the document and agreement on the relationship between the two state entities. Mr. Harmer was concerned that the commission was swamped working through the forms needed for 2003 and that now the response time may be limited by the processing of the forms. Commissioner Johnson confirmed the effective date of the bill. The Bill was effective July 1, 2003 and went through some revisions that limits accepting of investment prior to July 1, 2004. Mr. Harmer wants to nail down the process so that the Board can start meeting with the designated purchasers before then. Commissioner Johnson said he would talk with the other commissioners and the Executive Director Rod Marrelli and make sure that someone in their office be assigned to work with the Utah Capital Investment Board. Mr. Harmer reaffirmed the need to move quickly. Commissioner Johnson affirmed his commitment and the call ended.

Mr. Harmer mentioned again that the name of the transaction needs to be carefully worded. Mr. Harmer mentioned that the process of monetizing one of the certificates needs to be carefully defined and outlined. Mr. Renda explained that the designated purchaser will not require that an actual certificate be delivered with their tax filings but that the designated purchaser would have a certificate to provide an auditor interested in examining the transaction further. This may require a book of registry of those certificates and then create the ability to send that registry to the tax commission on a periodic basis. Robert Majka mentioned that the timeline of the certificate needs to be defined as well. Mr. Renda said these kinds of things would be outlined in a contract agreed upon between the designated purchaser and the UCIB. Mr. Harmer explained that the tax credit process would be defined in the rules and policies of the Board. A working group needs to be formed to define these kinds of things especially the development of a proposed designated purchaser agreement. Mr. Harmer asked Mr. Renda to get an individual from Zions bank to help and mentioned to Sterling Jenson to find someone. Sterling said he had talked with Steve Valerius to be the contact at Wells Fargo. He will write out a wish list of things he would like to see in the designated purchaser agreement and then assist in its development. Mr. Harmer asked if he and hopefully Dave Hemingway's contact at Zion's would be able to work with the UCIB to come up with a straw man agreement. Robert Majka asked if it would be possible to work on a dual track so that while the Board was working on getting the certificate contract developed, also start talking to possible contacts that would be interested in this as opposed to doing all the work and then going through the list and finding out that specific corporations are not interested. Mr. Harmer suggested that some possible corporations like Utah Power and Light and Questar are good ones to start with. Mr. Renda asked what the best way to contact the entities either one-on-one or perhaps inviting a group of these potential designated purchasers to a meeting and discuss it with a Board member present and start the discussion. Mr. Majka suggested that if someone knows someone from the corporation that they should start with a one-on-one approach. Mr. Harmer knows Bill Landel with Utah Power and could ask him for help on it. Some of the purchasers will probably make suggestions on verbiage for the contract. Mr. Harmer mentioned that a straw man contract was formed last spring. Mr. Harmer suggested putting together a working group including Banks, Utah Power, and Questar and try to work something out with the contract. That way they will have a vested interest in the process.

Mr. Harmer asked if one of David Hemingway's contacts would be able to participate in putting together verbiage for a straw man contract agreement that would facilitate participation as a public service or with a small transaction fee. The contract would need to address any concerns that may come up in the process. Mr. Harmer explained and Mr. Hemingway concurred that the tax credits would not even come into play unless there is no return on the investments. In this case there would need to be a time period in the contract to be able to go out and monetize the tax credits and then repay the investors. David Hemingway mentioned the hassle factor and how this could possibly limit the participation of the designated purchasers and that the designated purchasers might charge a fee for this service. Mr. Harmer explained that the intent is that we never have to monetize the credits.

B. FUND RAISING UPDATE

ILC Banks—Mr. Harmer reported on a meeting with CRA officials from American Express and UBS. Mr. Harmer suggested contacting individuals on a higher level to pitch the philosophy and get some feedback for a strategic plan that the regulators would buy into. Mr. Harmer said that if the board could structure some process that would get CRA credit, as discussed in the last board meeting, it would give the ILC's motivation to be involved. Some banks get an idea and then go to Gary Hancock who is the Federal Regulator for this area to pitch the idea. They assess his feelings and if he does not like it, they drop it. If he says he

likes it and wants to see more, they would come back to the Board for more input. A federal regulator will not talk to the Board or any other entity trying to get money. He would only talk to an ILC bank, CRA individual coming to him with an idea to work with the State of Utah. The Board needs to get someone to champion this idea and pitch it to the Federal Regulator. Mr. Harmer asked if the Federal Regulator would talk to the representatives at American Express and UBS that the Board worked with. Mr. Majka explained that the UBS representative would probably be more receptive and that UBS was in a better position to be involved in this project. Mr. Majka also suggested talking with Preston Jackson at Merrill Lynch. They are a large entity.

C. WORKERS COMPENSATION AND UTAH RETIREMENT SYSTEMS

Jeremy Neilson reported about his meeting with Workers Compensation and stated that the meeting was positive.

Mr. Renda described his contact with Utah Retirement Systems. Mr. Renda spoke with Bob Newman the Executive Director and he asked that the staff contact him at the end of the legislative session. There is a resolution in the legislation that the Utah Information Technology Association is pushing. It is now available and it encourages them to make direct investments into Utah ventures. We will follow up with this development. It was discussed among the group that Utah Retirements have a fiduciary responsibility to their beneficiaries and any investment that they would do would have to fall into one of their asset classifications that they are already doing. In our process of raising funds for the Utah Fund of Funds, we would not want to compete with their current gate keeper for venture funds but would want to fashion a instrument that doesn't look like venture investment but that would go against a fixed asset class. Mr. Renda suggested he would be following up with Utah retirement the second week of March after the legislative session. Mr. Majka summarized by noting that both organizations showed interest and explained the kind of instrument they would be interested in—a fixed one. Mr. Majka asked about the amount of the investment and Mr. Harmer expressed that the board would like to utilize as much of the \$100 million in tax credits as possible.

D. ESTABLISHMENT OF THE UTAH CAPITAL INVESTMENT CORPORATION

Jeremy Neilson gave an update on the Utah Capital Investment Corporation establishment stating that the articles of incorporation were accepted by the Utah Dept. of Commerce and that the form for a Federal Employee Identification Number had been filed with the IRS. Mr. Harmer than stated that the 5-member board of directors for the Utah Capital Investment Corporation had been selected and that letters asking for their service had been mailed and he was waiting for their response.

E. CONSTITUTIONALITY

The issue of Constitutionality was discussed with Mr. Harmer stating that he felt that the constitutionality issues had been addressed with the 2003 special session changes to the Utah Venture Capital Enhancement Act.

F. CONFIRMATION OF MEETING SCHEDULE

Meetings will be held every third Friday at 3:00. Robert Majka will not be at the next meeting.

III. ADJOURNMENT

With agenda items forwarded to next month, the meeting adjourned at 5:00 pm.